

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

ENTERED

OCT 31 1997

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U.S. DISTRICT COURT
N.D. OF ALABAMA

FILED

JAMES PHILLIP METCALF and)
GERALDINE METCALF,)
Plaintiffs,)
v.) CIVIL ACTION NO. 97-G-1010-S
LONG-AIR DOX COMPANY, INC.;)
FAIRCHILD INTERNATIONAL, INC.,)
Defendants.)

MEMORANDUM OPINION

This cause is before the court upon the alternative motion of defendant Long-Air Dox Company, Inc.¹ (hereinafter "Long-Air Dox") for summary judgment. This is a products liability action arising from injuries allegedly received by plaintiff James Phillip Metcalf while working as an underground belt vulcanizer in the mines of his employer, U.S. Steel Mining, on May 1, 1995. The Metcalfs brought this action asserting claims against Long-Air Dox Company, Inc., the alleged manufacturer of the belt drive involved in Mr. Metcalf's accident.

Subsequently, the plaintiffs discovered that the belt drive in question was not manufactured by defendant Long-Air Dox.

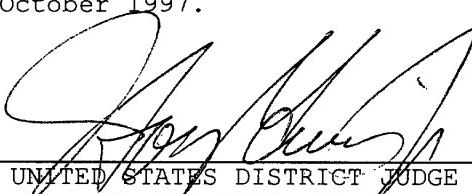
¹ This defendant is referred to as Long Airdox Company, Inc. by its attorney.

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They have amended their complaint to add Fairchild International, Inc. who they now allege actually manufactured the belt drive. Plaintiff James Phillip Metcalf, in his affidavit attached to the plaintiffs motion to amend, states as follows: "I contacted additional personnel in the mines and for the first time, discovered that the belt drive which caused my injuries was in fact manufactured by Fairchild." The plaintiffs have informed the court they do not intend to submit anything in opposition to the motion and a review of the record indicates that there is no evidence tending to indicate that defendant Long-Air Dox was the manufacturer of the belt drive that allegedly injured Mr. Metcalf. Accordingly, there is no genuine issue for trial as to the plaintiffs' claims against defendant Long-Air Dox and that defendant is entitled to a judgment as a matter of law.

An appropriate order will be entered contemporaneously herewith.

DONE this 30th day of October 1997.


UNITED STATES DISTRICT JUDGE
J. FOY GUIN, JR.